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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 GANSETT ONE LLC, et al.,

4 Plaintiffs,

5 v.

15 CV 3551 (ALC)

6 HUSCH BLACKWELL LLP, et al.,

7 Defendants.

8 -----x
9 New York, N.Y.
June 25, 2015
10:22 a.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13 APPEARANCES

14 EPSTEIN ARLEN & OSTROVE LLC
15 Attorneys for Plaintiffs

16 BY: DAVID OSTROVE

17 -AND-

RICHARD L. PLOTKIN

18 MATALON SHWEKY ELMAN PLLC
19 Attorneys for Defendants

20 BY: HOWARD IAN ELMAN

21 -AND-

22 WHEELER TRIGG O'DONNELL LLP
23 BY: CHRISTOPHER P. MONTVILLE
24
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1 THE DEPUTY CLERK: Civil cause for a premotion
2 conference on Case No. 15 CV 3551, Gansett One versus Husch
3 Blackwell, et al.

4 Counsel, please state your appearances. For the
5 plaintiffs?

6 MR. OSTROVE: Good morning, your Honor. Elliot
7 Ostrove, Epstein Arlen & Ostrove, for the plaintiff.

8 MR. PLOTKIN: And Richard Plotkin, Epstein Arlen &
9 Ostrove, also for the plaintiff. And, your Honor, I have a
10 motion for pro hac vice admission which is still pending.

11 THE COURT: Okay.

12 THE DEPUTY CLERK: And for the defendants?

13 MR. ELMAN: Good morning, your Honor. Howard Elman,
14 of Matalon Shweky Elman, for the defendant Husch Blackwell.
15 I'm joined by my colleague, co-counsel, Chris Montville, who
16 came all the way from Colorado to see your Honor this morning,
17 and Mr. Montville's pro hac application is also pending.

18 THE COURT: Okay. Good morning.

19 Hold on just a second.

20 (Pause)

21 THE COURT: Okay, we are here for a premotion
22 conference. I've looked at the submissions from the parties.
23 Let me just get a clearer sense from the defendants about what
24 this motion is going to be about. I know that you have some
25 concerns about the level of particularity in the complaint, but

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1 let me just get a little further elucidation from the
2 defendants about this anticipated motion.

3 MR. MONTVILLE: Your Honor, with my pro hac pending, I
4 assume that I can still speak?

5 THE COURT: Yes.

6 MR. MONTVILLE: Okay. So --

7 THE COURT: And you can remain seated if you'd like.

8 MR. MONTVILLE: I love to stand.

9 THE COURT: Okay.

10 MR. MONTVILLE: The problem with this complaint goes
11 far beyond particularity. This is an extraordinarily detailed
12 complaint, it's 39 pages, it's 149 paragraphs. With all the
13 things that are in there, most of which have nothing to do with
14 my client, there is still no specific allegation that would
15 support the RICO predicate act, which apparently is mail wire
16 fraud that would support a fraud claim or would support the
17 standard in aiding and abetting fraud, which in New York State,
18 as well as the other states where it might apply, requires an
19 actual affirmative statement, some sort of substantive
20 assistance, or only an admission if there is some sort of
21 existing duty.

22 Now, this is a case where our client represented
23 companies that were a party to this lawsuit, they're being sued
24 by companies who did a transaction with our client. This is
25 automatically a disfavored case. It's someone trying to sue

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1 someone else's lawyer for acting within the scope of their
2 legal services.

3 So with respect to the RICO claim, I don't think I'm
4 exaggerating when I say that none of the elements of the RICO
5 claim have been pled. I mentioned the predicate act, which is
6 apparently mail and wire fraud, as reflected in the response to
7 our letter. Mail and wire fraud requires some sort of
8 affirmative act, predicate act, by the defendant, him or
9 herself, or enabling the predicate act. And there's no
10 allegation in the complaint my clients did anything
11 affirmatively except draft a document.

12 And the language that you will find dozens of times in
13 the complaint is that there were meetings. And Diane Carter,
14 who's the lawyer involved, sat by at the meetings, she had
15 knowledge of these representations, she aided and encouraged
16 her client to do something. That's not enough. There are no
17 specific statements attributed to her. It's just, she was a
18 lawyer, in the room, therefore, she is liable because she can
19 pay a judgment. And that's the sort of complaint the courts in
20 New York regularly dismiss because simply for the in terrorem
21 effect of suing someone else's lawyer in the professional scope
22 ever their job.

23 The RICO claim also fails because there is a
24 requirement that there be a pattern of racketeering activity.
25 In this particular case, the entirety of the pattern lasted,

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1 depending how generously you construe it, I would say, two
2 months of investments. There were two investments that the
3 plaintiffs made with this nonparty, my client's client. There
4 were four documents in two months. My client drafted them,
5 that was her involvement. New York State law -- or the Second
6 Circuit says that they have never recognized the pattern of --
7 closed any pattern of less than two years.

8 So here we're talking two months. The first time my
9 client even met the plaintiff's principals was a total of five
10 months. So, as a matter of law, in New York State, that cannot
11 be a pattern of a RICO. And an open-ended continuity isn't
12 alleged. That's a very exacting standard.

13 And then specific to the fact that my client is a
14 lawyer: In the Ernst & Young case, the United States Supreme
15 Court, a similar case involving an accounting firm, not a
16 lawyer, was very clear that the defendant has to participate in
17 the management or control of the racketeering enterprise.
18 There is no allegation, not even a conclusory allegation, that
19 Husch Blackwell or Ms. Carter had any control over the
20 enterprise.

21 Which leads to the question of is there even an
22 enterprise. And all that's alleged in the complaint is that
23 Mr. Nezami failed to disclose things that I don't believe were
24 material and that one person also cannot be an enterprise under
25 New York law. So the RICO claim fails under very clear-cut

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1 Second Circuit precedent.

2 The fraud claim fails, first, because of lack of
3 particularity. Again, as I said, this is such a detailed
4 complaint that I would imagine that if there was anything that
5 Ms. Carter actually said, as opposed to standing idly by, as
6 opposed to sitting in the room, that there would be allegations
7 about that. If -- there are allegations and I think the
8 plaintiffs have an obligation to amend so we don't have to go
9 through this motion to dismiss process twice.

10 The aiding-and-abetting claim, like I said, there has
11 to be substantial assistance.

12 There is also a negligent misrepresentation claim. I
13 would respectfully say that this claim borders on frivolous.
14 There has to be a duty between the defendant and the plaintiff,
15 for a negligent misrepresentation claim, while it's clear
16 lawyers do not owe those kinds of duties to nonclients. And
17 there also has to be an affirmative statement, and, again,
18 there's no affirmative statement alleged in the complaint.

19 So I think that this is a clear case of a whole bunch
20 of conclusory allegations, with words like the defendant
21 participated or encouraged. There are no facts. So this is
22 why we're moving to dismiss the complaint in its entirety.

23 Thank you.

24 THE COURT: Thank you.

25 Anything from plaintiff on this?

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1 MR. PLOTKIN: Yes, your Honor.

2 THE COURT: You may remain seated if you'd like, you
3 can stand; whatever you'd like to do.

4 MR. PLOTKIN: I'll stand.

5 THE COURT: Okay.

6 MR. PLOTKIN: I'm not sure counsel is reading the same
7 complaint as we're reading, so if I can just go back and assert
8 what it is that is contained in this 149-paragraph complaint
9 that I would suggest is as detailed and specific as any
10 complaint I've ever seen prior to the discovery proceeding.

11 In any event, Diane Carter, ultimately a partner at
12 Husch Blackwell, had represented Mr. Nezami and his companies
13 for over ten years, and this is represented by Mr. Nezami in
14 the presence of Ms. Carter. As we set forth in the complaint,
15 this is not a situation where an attorney only sat by and
16 allowed her clients to make misrepresentations. This is a
17 matter -- and it's set forth at length in the complaint --
18 where the attorney actively participated in the fraud and in
19 the effort to defraud the plaintiffs.

20 Let me just highlight a few of the many items that we
21 referred to in the complaint. It's asserted in the complaint
22 that Mr. Nezami, from and after September 2013, stole up to
23 \$1.4 million from various private companies. There's a number
24 of them; we collectively refer to them in the complaint as
25 private companies.

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1 We also assert in the complaint that this embezzlement
2 of funds was learned of as of March 2014 by certain parties,
3 including Ms. Carter, a partner at Husch Blackwell, during the
4 agreements that have been entered into by the plaintiffs, dated
5 in March, April, May, and the final payment and signing was in
6 June, although the agreement was made as-of effective in
7 mid-May. And we assert that Ms. Carter was part of the scheme
8 to cover up this fraud and keep the information from our
9 clients, to the point that at one of the meetings or telephone
10 conversations, in the presence of Ms. Carter, it was stated,
11 don't tell David or Sam. David and Sam were two of the
12 representatives of plaintiffs. And it went further, that, if
13 we tell David or Sam, the companies will go under.

14 Basically, it was decided prior to May 23rd, 2013,
15 that instead of going public and stating that Nezami had
16 embezzled up to \$1.4 million, Ms. Carter participated in the
17 decision that she would prepare promissory notes and that the
18 books and records of the company would be modified to reflect
19 the \$1.4 million as being loans and draws to Mr. Nezami.

20 On May 23rd, 2014, Ms. Carter prepared promissory
21 notes from Nezami to two of the companies, totaling up
22 \$360,000, hence participating in the fraud, changing the theft
23 of funds into promissory notes that were never disclosed to our
24 clients. This was occurring at the same time as communications
25 were going on and negotiations were being made with the

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1 plaintiffs.

2 In another situation, on April 25th, 2014, Ms. Carter
3 prepared documents that gave a security interest to a third
4 party, Dr. Phelps, in the same companies that she later
5 prepared documents for the plaintiffs, saying that there were
6 no outstanding security interest. Also, these documents that
7 were prepared with the plaintiffs indicated that there were no
8 outstanding judgments, liens or investigations. We have
9 asserted in the complaint that Ms. Carter was aware that the
10 FBI was actively involved in the investigating Nezami, the IRS
11 was actively involved in investigating Nezami, and, to go one
12 step further, Homeland Security was actively involved in that.
13 So she clearly participated, actively and aided and abetted
14 this fraud.

15 Also, part of the interest acquired by the plaintiffs
16 was an interest in a company called Global Molecular Labs. So
17 Ms. Carter prepared the documents indicating that Nezami owned
18 an interest in Global Molecular Labs when she knew that he did
19 not own an interest in Global Molecular Labs. She was well
20 aware, we assert, that there were over \$400,000 of outstanding
21 tax liens against Nezami, there were \$3 million of judgments
22 outstanding against Nezami, and that nonetheless she went ahead
23 and prepared these documents, knowing full well that our
24 clients were being defrauded by this criminal enterprise.

25 She was part of this criminal enterprise, and, as a

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1 partner in Husch Blackwell, Husch Blackwell likewise is
2 responsible for her acts. There was another partner at Husch
3 Blackwell that participated in various meetings, and, we
4 assert, recklessly disregarded the facts and the clues that
5 were coming out of these various meetings and discussions.

6 We also assert in the complaint, and we attached an
7 exhibit, that Ms. Carter was to be given an equity interest in
8 a company -- that ultimately would be a beneficial interest in
9 a public company. And whether or not that interest was ever
10 given to her, I don't know, but this interest was promised to
11 her. We assert that this was to be a gift to Ms. Carter for
12 participating in this fraudulent scheme.

13 And as far as the Nezami clients were concerned, we
14 assert that they were a significant client of the firm and the
15 firm continued to represent that client, given the substantial
16 fees that it was being paid.

17 So for counsel to suggest that this is a situation
18 where a lawyer just sat by and remained silent as his or her
19 client was defrauding others, can't be further from the truth.
20 The complaint sets forth in great detail that Husch Blackwell
21 and Diane Carter aided and abetted on an active basis the fraud
22 of this criminal enterprise. This criminal enterprise, we
23 assert, is an open-ended criminal enterprise and, as a result,
24 the case cited by the defendants, which does not hold as a
25 matter of law that a RICO claim, even in a closed-ended matter,

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1 must be within -- more than two years. There's no case in
2 New York with the Second Circuit holding that as a matter of
3 law there's a two-year break to it, but we don't even have to
4 address that here because this is an open-ended fraud. Our
5 clients were just one -- actually four of many potential
6 investors that were defrauded. In fact, our client was told
7 that they were looking to get another \$50 million from
8 investors in the New York area. They went with our client to
9 find office space in New York in order to have a foundation up
10 in New York to seek other investors to defraud.

11 So this fraudulent scheme that we lay out in the
12 complaint, we submit, is continuing even to this day. And as
13 we set forth in our letter to your Honor, we've met all the
14 burdens, we submit, as far as the RICO claim is concerned. The
15 wire and mail fraud issues are clear and set forth throughout
16 the complaint.

17 If I might, the Second Circuit has said that the test
18 of participating in and directing the enterprise's affairs is
19 a, quote, relatively low hurdle for plaintiffs to clear,
20 especially at the pleading stage. The pattern of racketeering
21 activity is set forth at length; I just highlighted certain of
22 the more egregious acts that we set forth in the complaint, and
23 that certainly our client, the plaintiffs, were certainly
24 foreseeable victims of the fraud.

25 Certainly, at this stage of the proceeding, we submit

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1 that the complaint substantiates all of the claims, whether it
2 be the common-law fraud claim, the RICO claim, the negligent
3 supervision claim, and the negligent misrepresentation claim.

4 Also, we've cited in the cases the Texas Disciplinary
5 Rule 1.02(c) and 4.01, which basically says that an attorney
6 cannot allow a client to misrepresent to others.

7 So even on the nondisclosure issue, which we go far
8 beyond, we submit that Husch Blackwell and Diane Carter
9 participated and should properly be in the case, but we don't
10 even have to focus on that because we have so many affirmative
11 statements in the complaint, and attaching as exhibits certain
12 documents, that demonstrate that Husch Blackwell and Diane
13 Carter were active participants in this fraud and that Husch
14 Blackwell failed to properly supervise Ms. Carter and
15 Mr. Carmen that we refer to in the complaint.

16 And as far as the damages, we've set forth our claim
17 for compensatory damages, RICO damages, and punitive damages.
18 And we've asserted in our letter to your Honor the basis for
19 that.

20 Thank you.

21 THE COURT: Okay.

22 Let me just ask plaintiffs' counsel one question. I
23 am curious: The assertions regarding Ms. Carter's knowledge of
24 this alleged fraud, I just want to get a sense, where does that
25 information come from, in terms of the assertions that she knew

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1 about these frauds and knew that the nonparty was making false
2 statements and the like? Where does that come from?

3 MR. PLOTKIN: It comes from third-party witnesses.
4 I've identified in the complaint, without naming him, I
5 potential whistleblower who Mr. Nezami pointed a gun at him, as
6 we say in the complaint, and took a knife to his throat and
7 basically told him, you're either with us or against us. And
8 Ms. Carter, we say, is aware of that. I have had many
9 discussions with counsel for this potential whistleblower and
10 with the whistleblower also.

11 In addition, we have other information from other
12 parties that indicate that Ms. Carter was aware of everything
13 that we put in the complaint. All of the specifics that I put
14 in the complaint, except where I say it's upon information and
15 belief, which are very few and far between, are based on
16 information I received from third parties.

17 Obviously, also, as far as comments that were made to
18 our client in meetings, for example, that our clients
19 participated in when Mr. Nezami and Ms. Carter and several
20 others sat in at 17 meetings in New York, at least 17 meetings,
21 with investment banking firms, with private equity firms and
22 with one hedge fund, a number of representations were made.
23 Those representations went into the financials, and we have
24 received -- the financials we were given were fraudulent and
25 did not include accurate information. I received the updated

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1 financials, compared them to the financials that we were given,
2 demonstrating that they were false, and we have information
3 from a number of sources that Diane Carter was fully aware of
4 everything that was taking place.

5 As I said, your Honor, a lot of investigation went
6 into this before we filed the complaint, and we certainly did
7 not just willy-nilly say, okay, we're going to pick this Am Law
8 100 law firm, with over 600 lawyers, and just sue them. We
9 looked into this, I spoke to third parties, I myself spoke with
10 third parties, did the investigation, and everything that we
11 say in this complaint I'm very comfortable with, and that Diane
12 Carter was well aware of the fraud that we say started in, at
13 least on this level, back in 2010, when Nezami and his
14 interests acquired the public company out of bankruptcy that
15 ultimately became Titanium Healthcare.

16 If I were to tell you -- I couldn't come up with a
17 number, but I'd say at least five people that I have spoken to
18 have said Diane Carter knew everything that was going on and
19 was privy to the statements, don't tell David or Sam, meaning
20 our clients, or else the companies will go under, because our
21 clients obviously would have pulled the plug and not gone ahead
22 with the deal and the like.

23 We have been told that criminal proceedings are
24 imminent against Mr. Nezami, from the FBI, but I've been told
25 that for the last few months. And the IRS, keeping in mind she

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1 represented Nezami for over ten years, Nezami in all of the 17
2 meetings said he never does anything without Diane Carter's
3 blessing and Diane Carter knows everything that he does. She
4 was present, as a matter of fact, at each of the meetings.
5 Nezami would say, Diane, who's the most conservative person you
6 know? And she would respond, you are, Kam. She was part and
7 parcel of this scam and actively participated in it, your
8 Honor. And we would not lightly file a complaint against
9 anybody, but certainly filing a complaint against a lawyer, I
10 would make sure that we were on firm ground, which we did make
11 sure.

12 THE COURT: I'm also curious: Obviously, plaintiff is
13 in charge of your complaint and you can sue whomever you wish,
14 within limits, and you can choose not to sue people. I guess I
15 was wondering as to why Nezami and these other entities are in
16 fact nonparties since the complaint seems to allege that they
17 were really critically engaged in this fraud.

18 MR. PLOTKIN: Let me address the Nezami piece.

19 Nezami, we are told, has no assets, he is bouncing
20 checks, the FBI is about -- and I was told this two months
21 ago -- about to go against him. In September of 2014, the IRS
22 took a number of cases pending against him around the country
23 and consolidated them all in Texas for \$400,000 of tax liens
24 against him. Basically, this isn't in the complaint, but as
25 part of the agreement with our client, our clients had the

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1 right to ask for their money back within 18 months following
2 the execution of the agreements. Once our clients learned of
3 the fraud -- actually, suspected the fraud strongly, in
4 October 2014, they exercised their right to get their
5 \$1,350,000 back from Nezami and at the same time give back to
6 Nezami the interest that he passed.

7 Nezami was aware that I was a lawyer in New Jersey and
8 with contacts in New York, and he brought a declaratory
9 judgment action in Texas against our client, seeking
10 reformation of that agreement. Our clients in Texas -- this is
11 Texas state court -- filed a counterclaim based on contract,
12 not on fraud. That case is pending, but because we pretty much
13 have been told he has no assets and the government and the IRS
14 and everyone is coming down on him, we saw no reason to sue him
15 up here in New York, in that we have a separate and independent
16 claim against Husch Blackwell and against Diane Carter, and so
17 have no reason to sue Nezami.

18 As to the other parties that we identify in the
19 complaint as fictitious parties -- including we've sued
20 Mr. Hamby, who we have asserted participated in the fraud -- I
21 expect these people or certain people down in Texas to be
22 witnesses that will substantiate information that we have
23 received. And at least at this juncture we didn't see the need
24 to file the complaint against anyone other than Diane Carter
25 and Husch Blackwell in that they clearly were the ones that

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1 facilitated, aided and abetted this, and allowed this matter to
2 proceed. And we felt it was in the best interests of our
3 client, number one, to sue Husch Blackwell and Diane Carter
4 without suing Nezami, and to not bring in the other parties and
5 to rely on them as potential witnesses but I will say that I
6 have met with the potential whistleblower and his attorney, and
7 everything that we say in the complaint is substantiated.

8 I also have other information that I am not at liberty
9 now to disclose to the Court or to counsel, on which we're
10 relying, but be that as it may, basically everything in that
11 complaint, other than what I say is on information and belief,
12 we have substantiation for.

13 THE COURT: Okay, thank you.

14 I'm also I guess now -- always, but particularly now,
15 based on what's been stated here on the record -- wondering if
16 the parties have engaged in any sort of settlement negotiations
17 at all for these sort of settlement discussions because, again,
18 I don't know if this case is going to go beyond the pleading
19 stage, but if it does, this case might be expensive to
20 litigate, and I'm not sure if the parties have had any sort of
21 settlement discussions.

22 I don't want to know any numbers or anything like
23 that, but let me get a sense if the parties have had any sort
24 of settlement discussions or if the parties are in the position
25 that settlement is not going to happen, and if settlement

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1 discussions have taken place, I'd just like to get a general
2 sense, perhaps in aquatic terms, as to the distance between the
3 parties, if we're talking about an ocean, a river, or a pond.

4 MR. PLOTKIN: As to the parties, we are in discussion
5 with Defendant Hamby's attorney. He's an individual, he was a
6 controller, and basically he wrote out the checks that were
7 signed by Nezami or another third party for the \$1.4 million.
8 I'm hoping that we will be able to settle with him.

9 As far as discussions with the Husch Blackwell/Diane
10 Carter, there have been none, but I will be the first to
11 indicate that this case ought to be settled. To the surprise
12 of some, there has been no press coverage about it, on the
13 case, that I'm aware of certainly, and we would encourage such
14 discussions to take place.

15 THE COURT: Is there a particular reasons why
16 plaintiffs have not reached out to Husch Blackwell in terms of
17 a settlement discussion?

18 MR. PLOTKIN: They haven't reached out to us, I
19 haven't reached out to them. I'm now giving them a message
20 that we're prepared to talk settlement. I'm not sure, I don't
21 think there's any big secret that the large exposure here is
22 based on the punitive damage claim, which is a substantial
23 exposure. Husch Blackwell, based on the press release they
24 issued as of July 1, 2013, when they acquired Ms. Carter's
25 boutique law firm, that their gross for 2013 was \$319 million,

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1 they were one of the 100 largest law firms in the United
2 States, with over 600 lawyers in 17 states, plus a lawyer in
3 New York and an office in England, so that if we're able to go
4 to the jury, which I suspect and suggest we would be able to
5 go, the damages, potential damages, are enormous.

6 But if plaintiff is prepared to talk to us and include
7 settlement discussions that would include the potential
8 punitive damages, we would invite such discussions.

9 THE COURT: Okay. Because one of the concerns I have
10 in all litigation is that sometimes settlement discussions are
11 sort of like a seventh grade dance, no one wants to go first,
12 and typically it's the plaintiff's obligation to kind of make
13 that first move. But it seems to me that it may make sense for
14 the parties to have some settlement discussions here before we
15 get into perhaps even this motion practice, another lengthy
16 litigation, but let me hear from defense counsel on this.

17 MR. MONTVILLE: Yes, your Honor. I'm going to preface
18 this by saying that I don't have authority to speak for my
19 client on settlement issues. However, I may have misheard
20 Mr. Plotkin, but I believe one of the things that he said is
21 that this case has gotten publicity already. I'm going to be
22 clear that we are --

23 THE COURT: No, he said there hasn't.

24 MR. MONTVILLE: It hasn't had publicity already. That
25 is not going to be a motivating factor in settlement.

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1 Our position on settlement is driven by this
2 complaint. Everything I said earlier has been reconfirmed. He
3 said several times that Husch Blackwell drafted documents,
4 things were said in the presence of Ms. Carter, and then there
5 were a lot of conclusory, she knew this, she knew that, she
6 participated in that. That's not just Rule 90, that is an
7 Iqbal/Twombly issue, where the Second Circuit, this district
8 and New York State courts have been clear that you can't just
9 say someone had knowledge, you have to say why you believe
10 that.

11 If he's spoken to five people, if she was in the room
12 when something terrible was said, that might rise to knowledge.
13 It doesn't solve all these other problems of, she was only just
14 in the room, she was only drafting documents. Those are the
15 only allegations, and that's what our case evaluation is
16 focused on. This is an extraordinarily weak complaint. I'm
17 not sure that this is the point to engage in these discussions.

18 THE COURT: Okay, thank you.

19 Let's do this: I will give plaintiffs' counsel an
20 opportunity to amend their complaint, if that's what you'd like
21 to do. I'm not going to give you an advisory opinion as to
22 whether or not I think you have enough now or not, but,
23 generally, it's best to shoot your best shot, so I'll give you
24 an opportunity to amend the complaint if you'd like.

25 Let me find out: Does plaintiffs' counsel want to

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1 amend the complaint?

2 MR. PLOTKIN: Your Honor, if I might speak to the
3 clients as well as counsel, I'm certainly not authorized now to
4 say we're not prepared to amend the complaint.

5 THE COURT: All right. So let's do this. I will give
6 plaintiffs 30 days to file an amended complaint. In 30 days --
7 let's do this. In two weeks, let's have a joint status report
8 by the parties, and there's not going to be much input from the
9 defendants on this, but I'd like to know in two weeks whether
10 or not plaintiffs have decided to file an amended complaint,
11 let's get that done.

12 So two weeks from today would be when, Tara?

13 THE DEPUTY CLERK: July 9th.

14 THE COURT: Let's give a date for the filing of that
15 amended complaint, if the plaintiffs wish to do so, 30 days
16 from now, which would be when, Tara?

17 THE DEPUTY CLERK: The 24th of July.

18 THE COURT: Okay.

19 And then we will give -- if in fact there is an
20 amended complaint filed, we don't need to have another
21 premotion conference. I think that we'll just go ahead and
22 give the defendants a motion schedule to file their motion to
23 dismiss.

24 Let's do that 30 days after July 24th, which would be
25 when, Tara?

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1 THE DEPUTY CLERK: The 24th, Monday, August 24th.

2 THE COURT: Okay, August 24th for the defendants'
3 motion to dismiss.

4 We'll give the plaintiffs three weeks to respond to
5 that, which will take us to when, Tara?

6 THE DEPUTY CLERK: September 14th.

7 MR. PLOTKIN: Your Honor, in light of the summer
8 holiday and the Labor Day holiday, can you extend that to an
9 additional week?

10 THE COURT: That's fine. So that's September 21st?

11 THE DEPUTY CLERK: Yes.

12 THE COURT: And then we'll give the defendants two
13 weeks to file any reply, which will be when, Tara?

14 THE DEPUTY CLERK: October 5th.

15 THE COURT: Okay.

16 So we have the motion schedule, obviously. And,
17 again, in two weeks I want a joint status report just letting
18 us know whether the plaintiffs wish to file the amended
19 complaint. I don't think it necessarily makes a lot of sense
20 to change a lot of other things. So I guess if you want a
21 two-week period of time, the plaintiffs say that they don't
22 wish to file the amended complaint, let's just keep the motion
23 schedule that we have in place; we don't need to adjust it for
24 that extra two weeks.

25 Anything else from plaintiffs today?

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1 MR. PLOTKIN: If there is a decision to file the
2 amended complaint, then the schedule that your Honor listed is
3 the applicable schedule?

4 THE COURT: Correct.

5 MR. PLOTKIN: All right.

6 THE COURT: Yes.

7 MR. PLOTKIN: And if the motion is directed, let's
8 say, solely to the RICO counts, would defendants still required
9 to file an answer to the complaint in the common-law fraud
10 counts and negligent supervision and negligent
11 misrepresentation is also the complaint?

12 THE COURT: If that's the -- yes.

13 And defense counsel?

14 MR. MONTVILLE: Your Honor, the only other question I
15 have regards the discovery schedule. We would ask that there
16 not be a 26(f) conference, the discovery not start under way,
17 until there is a decision on the motion to dismiss.

18 THE COURT: I think typically I don't like to stay
19 discovery, but it may make sense in this case -- let me hear
20 from plaintiffs. What's your position on this?

21 MR. PLOTKIN: Your Honor, I would just as soon like
22 the opportunity to proceed with discovery and not wait for the
23 conference.

24 THE COURT: Well, I think defense counsel is saying
25 wait even past the conference. I think he's talking about

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1 after the motions have been decided.

2 MR. MONTVILLE: That's correct, your Honor. And I
3 know that this is an act of discretion, there's nothing in the
4 rule that says discovery waits until motion to dismiss has been
5 decided, but as your Honor pointed out, this is a very
6 expensive case, discovery in this case is going to be
7 extraordinarily complicated. As I have said, I believe the
8 complaint is very weak. At a minimum, things are, I would
9 imagine, certainly going to be narrowed. Starting expensive
10 discovery, ESI, engaging that whole process, before we really
11 know whether there's going to be a case or what the case is
12 going to be about, I think that that's not a good use of
13 anyone's resources, including the Court's.

14 THE COURT: Do defendants at this time anticipate that
15 you will be filing a motion to dismiss on all of the charges in
16 the complaint?

17 MR. MONTVILLE: Yes, your Honor. Unless there is a
18 radical new universe of facts that for some reason is not in
19 the 39 pages, I can't imagine that we wouldn't move to dismiss
20 all claims.

21 THE COURT: When you talk about expensive discovery,
22 what are you talking about in this case?

23 MR. MONTVILLE: Well, if you look at the complaint, it
24 lists, I'm going to guess about two different companies.
25 Although it's not true that Husch Blackwell represented

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1 Mr. Nezami on more than a couple isolated cases, Husch
2 Blackwell did do work for companies he was affiliated with on a
3 number of matters for an extensive period of time. This is
4 going to start with discussions, I would hope not in dispute --
5 we're talking dispute about the scope of discovery -- then
6 there's an attorney-client privilege between Husch Blackwell
7 and all those companies. If the plaintiffs think they're
8 entitled to privileged material, we're required to defend that
9 privilege. So that issue is going to come up.

10 Once that is all resolved, we're going to have to pull
11 files from dozens -- I do believe it's going to be dozens -- of
12 custodians to see if there's relevant material that in many
13 years -- I don't think most of that stuff is going to be
14 relevant, but I expect plaintiffs will take the position it
15 does, and all of that's going to have to be worked out. It's
16 going to be very costly.

17 THE COURT: Okay. Let's do this. I believe the last
18 date for the reply is October 5th.

19 Is that right, Tara?

20 THE DEPUTY CLERK: Yes.

21 THE COURT: Let's have a date about three weeks after
22 that, for a conference. And counsel can be free to appear by
23 telephone, and at that conference we can discuss whether or not
24 discovery should go forward. We'll hold off on discovery in
25 the short term but we'll see where we are.

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1 Once everything's been fully briefed, because it might
2 be that with the amended complaint that the defendants don't
3 wish to file a motion to dismiss on everything or, even if they
4 do, there may be some claims that it might be more obvious are
5 going to continue in this case and it would be helpful to kind
6 of have a sense of where we're going with discovery because
7 this does seem to be a case, the discovery issues are going to
8 have several layers to them, with attorney-client privilege
9 issues, with what plaintiffs' counsel has stated about the
10 third party potentially Fifth Amendment issues and all sorts of
11 other issues with witnesses at depositions and the like, so it
12 may make sense to have a clearer sense of where we are, but I
13 don't want to just delay discovery indefinitely.

14 So let's do that, let's hold off on discovery for now,
15 and let's have a conference on October 26th.

16 Can we get a time, Tara? And we can do it by
17 telephone?

18 THE DEPUTY CLERK: 1:00 o'clock.

19 THE COURT: Does 1:00 o'clock work for everyone?

20 MR. PLOTKIN: Yes.

21 MR. MONTVILLE: Yes, your Honor.

22 THE COURT: So let's do that and see where we are.

23 Anything else from plaintiff today?

24 MR. PLOTKIN: There are two motions pending, one on
25 our behalf, for me, and one for counsel pro hac vice. And

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1 other than that, no.

2 THE COURT: Okay, yes, so we've examined those
3 motions. We will grant the motions for pro hac vice.

4 MR. PLOTKIN: Thank you, your Honor.

5 MR. MONTVILLE: Thank you, your Honor.

6 And does that include my partner, Carolyn Fairless?

7 THE COURT: Yes.

8 MR. MONTVILLE: Thank you.

9 THE COURT: Anything else from plaintiffs' counsel
10 today?

11 MR. PLOTKIN: No, your Honor.

12 THE COURT: Anything else from defense counsel today?

13 MR. MONTVILLE: No, your Honor. Thank you, Judge.

14 THE COURT: Thank you. Have a good day.

15 (Adjourned)